

## THIS ISSUE

### Rating Permanent Impairment

#### TO:

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## Purpose

The purpose of this Provider Bulletin is to communicate a new rule on permanent partial disability. This rule clarifies to what extent, under the Industrial Insurance Act, pain is considered in an award for permanent partial disability. Specifically, the rule states that the Department will not consider pain in an impairment rating above and beyond what is already taken into account in the category rating system (WAC 296-20-220 through WAC 296-20-660) or in the organ and body system ratings of the AMA's *Guides to the Evaluation of Permanent Impairment*. For example, Chapter 18 of the 5<sup>th</sup> Edition of the AMA's *Guides to the Evaluation of Permanent Impairment* cannot be used to calculate awards for permanent partial disability under Washington's Industrial Insurance Act.

This rule applies to State Fund and Self-Insured claims and was effective December 1, 2002.

**This Provider Bulletin replaces the interim policy described in Provider Bulletin 01-10.**

## Reason for Adopting the Rule Change

This rule is in response to a new chapter in the AMA's *Guides to the Evaluation of Permanent Impairment*, Chapter 18, which proposes to rate pain in excess of what is already considered in other chapters of that document. Chapter 18 fails to segregate a worker's subjective areas of pain already taken into consideration in the Category rating system (WAC 296-20-220 through 296-20-660) and in the organ and body systems of the AMA's *Guides to the Evaluation of Permanent Impairment*. This will result in overlapping PPD awards, a double recovery, for the same impairment. Further, there have been no studies performed demonstrating that the methods outlined in the new chapter are valid or reliable. The American Medical Association itself has issued two subsequent publications highlighting the confusion and lack of clarity surrounding Chapter 18. In addition, Chapter 18 of the *Guides* conflicts with existing law, and may result in similarly situated injured workers receiving different PPD awards for the same degree of impairment.

Finally, WAC 296-20-19000 through WAC 296-20-19020 includes language that was previously located in WAC 296-20-01002, Definitions. These new WACs were created to place the definition of permanent partial disability closer to the other sections on this subject.

## Complete Text of the New Rule

### **WAC 296-20-19000 What is a permanent partial disability award?**

Permanent partial disability is any anatomic or functional abnormality or loss after maximum medical improvement (MMI) has been achieved. At MMI, the worker's condition is determined to be stable or nonprogressive at the time the evaluation is made. A permanent partial disability award is a monetary award designed to compensate the worker for the amputation or loss of function of a body part or organ system. Impairment is evaluated without reference to the nature of the injury or the treatment given. To ensure uniformity, consistency and fairness in rating permanent partial disability, it is essential that injured workers with comparable anatomic abnormalities and functional loss receive comparable disability awards. As such, the amount of the permanent partial disability award is not dependent upon or influenced by the economic impact of the occupational injury or disease on an individual worker. Rather, Washington's Industrial Insurance Act requires that permanent partial disability be established primarily by objective physical or clinical findings establishing a loss of function. Mental health impairments are evaluated under WAC 296-20-330 and WAC 296-20-340.

### **WAC 296-20-19010 Are there different types of permanent partial disabilities?**

Under Title 51 RCW, there are two types of permanent partial disabilities.

1. Specified disabilities are listed in RCW 51.32.080(1)(a). They are limited to amputation or loss of function of extremities, loss of hearing or loss of vision.
2. Unspecified disabilities include, but are not limited to, internal injuries, back injuries, mental health conditions, respiratory disorders, and other disorders affecting the internal organs.

### **WAC 296-20-19020 How is it determined which impairment rating system is to be used to rate specified and unspecified disabilities?**

1. Specified disabilities are rated in one of two ways:
  - (a) Impairment due to amputation, total loss of hearing, and total loss of vision are rated according to RCW 51.32.080;
  - (b) Impairment for the loss of function of extremities, as well as partial loss of hearing or vision, is rated using a nationally recognized impairment rating guide unless otherwise precluded by department rule.
2. Unspecified disabilities are rated in accordance with WAC 296-20-200 through WAC 296-20-660.

### **WAC 296-20-19030 To what extent is pain considered in an award for permanent partial disability?**

The categories used to rate unspecified disabilities incorporate the worker's subjective complaints. Similarly, the organ and body system ratings in the *AMA Guides to the Evaluation of Permanent Impairment* incorporate the worker's subjective complaints. A worker's subjective complaints or symptoms, such as a report of pain, cannot be objectively validated or measured. There is no valid, reliable or consistent means to segregate the worker's subjective complaints of pain from the pain already rated and compensated for in the conventional rating methods. When rating a worker's permanent partial disability, reliance is primarily placed on objective physical or clinical findings that are independent of voluntary action by the worker and can be seen, felt or consistently measured by examiners. No additional permanent partial disability award will be made beyond what is already allowed in the categories and in the organ and body system ratings in the *AMA Guides*.

For example:

- Chapter 18 of the 5<sup>th</sup> Edition of the *AMA Guides to the Evaluation of Permanent Impairment* attempts to rate impairment caused by a patient's pain complaints. The impairment caused by

the worker's pain complaints is already taken into consideration in the categories and in the organ and body system ratings in the *AMA Guides*. There is no reliable means to segregate the pain already rated and compensated from the pain impairment that Chapter 18 purports to rate. Chapter 18 of the 5<sup>th</sup> Edition of *AMA Guides to the Evaluation of Permanent Impairment* cannot be used to calculate awards for permanent partial disability under Washington's Industrial Insurance Act.

## **WAC 296-20-01002 Definitions**

**Permanent partial disability:** ~~Any anatomic or functional abnormality or loss after maximum rehabilitation has been achieved, which is determined to be stable or nonprogressive at the time the evaluation is made. When the attending doctor has reason to believe a permanent impairment exists, the department or self insurer should be notified. Specified disabilities (amputations or loss of function of extremities, loss of hearing or vision) are to be rated utilizing a nationally recognized impairment rating guide. Unspecified disabilities (internal injuries, spinal injuries, mental health, etc.) are to be rated utilizing the category system detailed under WAC 296-20-200 et al. for injuries occurring on or after October 1, 1974. Under Washington law disability awards are based solely on physical or mental impairment due to the accepted injury or conditions without consideration of economic factors.~~

## **4<sup>th</sup> vs. 5<sup>th</sup> Edition**

Effective immediately, only the most recent version of the *AMA Guides*, currently the Fifth Edition, may be used for Washington's workers' compensation and crime victims' compensation systems.

The *AMA Guides* is available from Order Department, American Medical Association, P.O. Box 109050, Chicago, Illinois, 60610-9050, 1-800-621-8335 or (312) 464-5651.

## **Which Rating System to Use**

For full details on the requirements of the examination process, please refer to the Department's *Medical Examiners' Handbook*. However, as a quick reminder to examiners, please note that several different rating systems are required depending upon the nature of the injury.

### Washington State Category Rating System

- To rate impairment resulting from back disorders, psychiatric disorders, neurological disorders, respiratory disorders and other disorders affecting the internal organs, the Washington State Category Rating System must be used. (See WAC 296-20-200 through WAC 296-20-660.)

### AMA's Guides to the Evaluation of Permanent Impairment

- If the injury or occupational disease is not included in the Category Rating System and is not an amputation or total loss of vision or hearing, then the impairment is rated as a percentage, generally using the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. For example, this rating system is used for loss of function of extremities, and partial loss of vision and hearing.

### RCW 51.32.080

- Amputation or total loss of vision or hearing are reported according to RCW 51.32.080.

## Additional Resources

Physicians may want to refer to the following resources to obtain administrative and practical information on rating permanent impairment.

- *AMA's Guides to the Evaluation of Permanent Impairment* is available from the AMA at 800-621-8335.
- *Medical Examiners' Handbook* is available at no cost through the Provider Toll-Free Hotline at 800-848-0811.

The *Medical Examiners' Handbook* describes Independent Medical Examinations (IMEs), requirements for performing IMEs, including documentation requirements, and fee schedules.

- *Attending Doctor's Handbook* is available through the Provider Toll-Free Hotline at 800-848-0811.

The *Attending Doctor's Handbook* is an easy-to-use reference for all doctors treating workers covered by the Washington State Industrial Insurance Act. Included are phone numbers and addresses of resources at the department and elsewhere to assist in job modifications, return-to-work plans, consultations and other services. This handbook also reviews regulations, practices, policies and procedures that providers must follow while treating these workers.

Although this document is free of charge, doctors may receive 3 hours of Category 1 Continuing Medical Education credit by reading the handbook and completing a brief self-assessment. This handbook is accredited by the American College of Occupational and Environmental Medicine (ACOEM).

- [www.lni.wa.gov/hsa/calendar.htm](http://www.lni.wa.gov/hsa/calendar.htm) - This website provides information on department-sponsored seminars, some of which focus on rating permanent impairment. Many of these seminars are accredited for continuing education.